

Joshua Bernstein

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1 Q. Do you have any hard  
2 evidence or hard basis for saying that  
3 other than your belief?  
4 A. Not at this point.  
5 Q. Do you, the period -- I  
6 think we went over this -- the period of  
7 missing sent e-mails was roughly May  
8 through August or September of 2008?  
9 A. I don't have it offhand.  
10 Q. Approximately. I won't hold  
11 you. Give or take a month; is that  
12 right?  
13 A. I will give that, yeah.  
14 Q. So during that period did  
15 you download any of your files or all of  
16 your files to this portable hard drive?  
17 A. During that period I did  
18 download files.  
19 THE WITNESS: Can I use the  
20 bathroom real quick.  
21 (Whereupon, a short recess  
22 was taken.)  
23 MR. DOMB: What's the last  
24 question please.

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1 (Whereupon, the requested  
2 question was read back by the  
3 reporter.)  
4 Q. And you said, I believe that  
5 you keep these in a portable hard drive?  
6 A. What are these?  
7 Q. The electronic files from  
8 Bayrock that you took with you?  
9 A. I did.  
10 Q. And you still have it?  
11 A. I don't have that drive,  
12 that specific drive, no.  
13 Q. You transferred it to a  
14 different drive?  
15 A. Yes.  
16 Q. So the contents are still  
17 there?  
18 A. Yes.  
19 Q. Does the drive have things  
20 on it other than Bayrock-related items?  
21 A. Does the current drive or  
22 the --  
23 Q. Well, how many do you now  
24 have?

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1 A. I don't know. I don't keep  
2 count.  
3 Q. Do you have the more than  
4 one external drive containing Bayrock  
5 materials?  
6 A. I don't believe so.  
7 Q. So you have one?  
8 A. Yes.  
9 Q. Does that, what do you call  
10 that, an external drive? Is that a good  
11 term for you to use?  
12 A. It works.  
13 Q. Does that drive contain  
14 items other than Bayrock-related items?  
15 A. I believe so.  
16 Q. Is there a way for you to  
17 separate out the Bayrock from the  
18 non-Bayrock?  
19 A. Should be.  
20 Q. How would you do it?  
21 A. Manually.  
22 Q. One by one?  
23 A. Absolutely.  
24 Q. How many different e-mails

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1 or files are in it?  
2 A. I don't know.  
3 Q. When you produced documents  
4 in this case you did not produce all the  
5 Bayrock-related items in that portable  
6 hard drive, did you?  
7 A. It's all relevant documents.  
8 Q. And you made the decision as  
9 to what is relevant or not?  
10 A. (No response.)  
11 Q. Who made that decision?  
12 MR. FEINBERG: You served a  
13 documented request. He responded  
14 to the document request.  
15 MR. DOMB: I'm asking a  
16 simple question.  
17 Q. Who made the decision as to  
18 what to produce from that drive? Was it  
19 you?  
20 A. Between my counsel and I.  
21 Q. So did you, are there some  
22 Bayrock-related materials that you did  
23 not produce?  
24 A. Yes.

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1 MR. DOMB: Do you have any  
2 objection to producing all  
3 Bayrock-related materials that you  
4 have not yet produced from that  
5 portable hard drive.

6 MR. FEINBERG: I guess if  
7 you make a request specifically  
8 we'll take it under advisement  
9 whether we have a problem with it  
10 or not.

11 MR. DOMB: From my review of  
12 the document request I thought it  
13 was very broad and it was already  
14 requested.

15 But, for the record, we do  
16 request that you produce promptly  
17 all Bayrock-related items from  
18 that drive.

19 And as you know there's been  
20 a dispute. We also request the  
21 ability for an independent  
22 computer expert to review that and  
23 make sure that that happens. So  
24 we do make that request, and

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1 please mark that.

2 MR. OBERLANDER: That's  
3 bilateral, isn't it? I think we  
4 made the same request. I'm just  
5 saying that it can be coordinated.

6 MR. FEINBERG: You made the  
7 request, because you have missing  
8 documents that we were going to  
9 access to try to find out why or  
10 in what manner they were deleted,  
11 okay. We've never indicated that  
12 we have files that have been  
13 deleted or other materials that  
14 require --

15 You don't get access  
16 automatically to someone's  
17 computer just because you want to  
18 see what they have. You made your  
19 request and we'll take it under  
20 advisement.

21 MR. DOMB: The record says  
22 what it says. There are  
23 Bayrock-related materials that  
24 your side made a decision not to

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1 produce some and not others, and  
2 we are entitled to see all of  
3 them. So we make that request.

4 MR. FEINBERG: And we'll  
5 verify to see whether the request  
6 that you made in terms of the  
7 document response has been  
8 complied with.

9 And there may be documents  
10 other than those which were  
11 responsive to your request, which  
12 is what I assume you're asking  
13 for.

14 In other words, just so  
15 we're clear, you have a document  
16 request --

17 MR. DOMB: I'm making two  
18 requests. If we requested it and  
19 it hasn't been produced, obviously  
20 we want it.

21 MR. FEINBERG: Obviously.

22 MR. DOMB: And if you did  
23 not read our request broadly  
24 enough, we now request all

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1 Bayrock-related items in that  
2 portable hard drive, whether you  
3 deem them to be within our  
4 document request, or whether  
5 anyone deems them to be --

6 MR. FEINBERG: That's a new  
7 request, and we'll take that under  
8 advisement.

9 BY MR. DOMB:

10 Q. Have you now described  
11 fairly all of the Bayrock-related items  
12 that you took with you after you left  
13 Bayrock, that is, paper and electronic  
14 files?

15 A. All of what I -- there was a  
16 Blackberry that I sent back to Bayrock,  
17 that I retained or sent back.

18 Q. Okay. On the Blackberry,  
19 you had a Blackberry that was issued to  
20 you or provided to you by Bayrock?

21 A. Correct.

22 Q. And after you left Bayrock  
23 you sent it back?

24 A. Yes.